

## Bill Lovallo

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**From:** brianiler@icloud.com  
**Sent:** Monday, July 10, 2023 3:32 PM  
**To:** OpenMeeting (AGO)  
**Cc:** George Hall; Bill Lovallo; TownClerk; Cushman, Ellen; Select Mailbox; Michael Widmer; Patrice Garvin (pgarvin@belmont-ma.gov)  
**Subject:** Re: Open Meeting Law complaint  
**Attachments:** 7d\_budget\_accountability\_process.pdf; 2018-07-17\_oml\_training.pdf; 2022-03-02\_high\_school\_bldg\_minutes.pdf; bmhs\_project\_construction\_change\_0.pdf; BMHSBC-4-11-Materials.pdf; Letter to Brian Iler(1511576.2).pdf; OML 2017 Guide with ed materials\_revised 1-30-18.pdf; OML Complaint.pdf

Massachusetts Office of the Attorney General, Division of Open Government:

On April 12, 2023 I filed an Open Meeting Law (OML) complaint with the Belmont Middle and High School Building Committee (“Committee”). The Committee assigned the Belmont Town Counsel (“the Counsel”) to respond. The Counsel’s response (attached) is unsatisfactory, as he rejects my characterization of the Committee’s documentation as containing opinions, and he offers no remedy. I ask that your office review my complaint.

I have attached my original complaint (“OML Complaint”), Town Counsel’s response (“Letter to Brian Iler(1511576.2).pdf”), and other documents that I reference in this email.

I maintain in my original complaint, and reiterate here (with additional explanation and evidence) that many of the documents distributed via email to the Committee prior to public meetings (including on April 11, 2023) include “opinions” from Committee members, specifically the Chair and Vice Chair, and therefore need to be made simultaneously available to the public.

Using the Counsel’s own interpretation of “opinion,” guided by the Boelter v. Board of Selectmen of Wayland case and the AG’s ruling in the Duncan OML complaint against the Belmont Planning Board (“OPEN MEETING LAW: Limits on Communications and Information Sharing Outside of Public Meetings” <https://www.belmont-ma.gov/town-clerk/files/open-meeting-law-2018-town-counsel-training-0> and attached) a committee member who “edits” or “authors” a document is in effect providing an opinion, and when distributed to a quorum of the committee this constitutes a “deliberation.”

The Committee’s Chair and Vice Chair participate in weekly (non-public) meetings with the Belmont Middle and High School construction project partners (architect, general contractor and owner’s project manager) where they “review” project changes, and approve or not approve inclusion of these changes in documentation distributed to the committee via email prior to the public meetings. This process is described in the committee’s own documentation. First, in a document entitled, “bmhs\_project\_construction\_change\_0.pdf” (attached, and available here: <https://www.belmont-ma.gov/belmont-middle-and-high-school-building-committee/news/bmhs-project-construction-change> );

“Monthly the PCCO [Prime Contract Change Order] is reviewed by the Chair and Vice Chair prior to Committee to confirm it is complete and ready  
If PCO’s [Project Change Orders] are questioned by Chair and/or Vice Chair, they are removed from PCCO until they are deemed ready.”

[Note: the cadence of these meetings was increased to weekly, as described in the meeting minutes of the March 2, 2022 Committee meeting, attached]

Additionally, this process is described in a document created by CHA (the owner's project manager), "7d\_budget\_accountability\_process.pdf," (available here: <https://www.belmont-ma.gov/documents/presentation-materials/files/2022-03-02-7d-project-cost-accountability-cha> , and attached):

"4. ...Any added cost goes through a comprehensive review process to not only review cost, but impact to the project, and then is presented to the Chair and Vice Chair for review, including a new VE effort if needed to offset any new added cost

"5. All new items are then reviewed with the Chair and Vice Chair before official approval to proceed is given. This review also includes a recommendation regarding the specific line-item funding source. Any added cost identified on the Cost Exposure Log is reviewed to consider funding from the Owner's Construction Contingency, where the Chair and Vice Chair can approve up to \$50,000 and anything above that must be approved by the Building Committee."

The results of this review and approval process appear in several documents distributed to the Committee on April 11, 2023. They are available for view in the attached document, "BMHSBC-4-11-Materials.pdf," and include documents #8, 9, 10a, 10b, 10c and 11.

These "added costs," "items," and "change orders" are of great interest to the public because which items are included or excluded, the descriptions provided, and other details characterize the Committee's and project partners' cost accountability practices, the financial health of the project, and often which items may be removed from the project.

In addition to denying the public simultaneous access to the Committee's deliberations by not providing the edited documents to the public at the same time as they are distributed to Committee members, when they are not available to the public during the public meeting the public is unable to fully understand the Committee's deliberations because they are often unreadable onscreen via the Zoom application. Important Committee discussions center on these documents, which are often many pages long, with detailed lists in small type. Delaying the public's access to these documents thwarts the purpose of the OML by denying the public the "...knowledge about the considerations underlying governmental action..." (Open Meeting Law Guide and Educational Materials, pg 4). One document the Counsel references in his response to this complaint is a case in point: "an updated summary of project costs"--#8--is 16 pages long and uses a small type size. This document has all of the listed "change order" items ("reviewed," and "approved," by the Chair and Vice Chair prior to the public meeting), and is of interest to the public, relevant to the public deliberations of the Committee, and is referenced frequently. This is a standard document type that the Committee reviews in all of its monthly business meetings (including the April 13, 2023 meeting, where the specific documents in question were discussed). The public has no control over if and how the document is displayed on screen. Since all Committee members have copies of these documents, they can follow along with and participate in the discussions. To the public they are essentially unreadable, and therefore the public is unable to observe their deliberations.

In addition to the regular change order process and documentation, the committee also edits other documents, including those listing "contingency refresh items," reports of Covid costs, etc. The Committee is quite open regarding their members' contribution to these documents. For example, on March 23, 2023 the Committee Chair stated, in reference to preparing a Contingency Refresh List, "I've been involved in four hours of meetings cumulative through almost the last week; I know that's just summary, talking about content to present..." These meetings were not public meetings, and the resulting documents were distributed to committee members prior to the public meeting, and not made available to the public until after the public meeting. Although these other documents are not those specifically mentioned in this complaint, they illustrate the ongoing role of committee members in the editing of documents distributed to the committee and not to the public prior to meetings.

The Chair has made it clear many times that he will not entertain the public release of any documents prior to the public Committee meetings. His only reason for this practice is, "I manage the presentation material in a

manner consistent with other Belmont committees, and I do not intend to make any changes in that process at this time.” (4/13/2023). I would prefer the Committee’s practices be guided by adherence to rule of law, and spirit of openness and transparency, rather than simple conformance with tradition (which, if true, begs for review and revision).

The remedy is simple: post the meeting documents online simultaneously with distribution to the Committee. I propose that *all* presentation documents be posted at this time, to avoid having to determine which ones have been edited by Committee members and which ones haven’t.

Another committee member, the Town Administrator, expressed that it would be a hardship for the town staff to post these documents earlier. This strikes us as a simple matter of prioritizing staff tasks, well within the authority of the Town Administrator. And as anyone who is familiar with the process of posting documents on a website knows, the task should take less than five minutes. Of course even if the task *were* onerous, it is still incumbent on the Town Administrator to ensure this task is completed expeditiously to conform with the spirit and letter of the OML.

Please review my complaint which I believe justifies your office compelling the Committee to make all of its future meeting presentation documents available to the public simultaneously with their distribution to the Committee.

Thank you for your attention to this matter.

Brian Iler

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Brian Iler  
482 School Street  
Belmont, MA 02478  
617 413-3476

On May 17, 2023, at 1:43 PM, OpenMeeting (AGO) <openmeeting@state.ma.us> wrote:

Dear Brian Iler,

We understand that on April 12, 2023 you filed a complaint with the Belmont Middle and High School Building Committee (“Committee”) alleging a violation of the Open Meeting Law, G.L. c. 30A, §§ 18-25. The Committee is required to notify our office of the complaint and any remedial action taken to address the complaint. G.L. c. 30A, § 23(b); 940 CMR 29.05(5). Our office received notification and a response from the Committee on April 29, 2023.

Under the Open Meeting Law, our office may only review your complaint after 30 days have passed from the time you first filed your complaint with the Committee. G.L. c. 30A, § 23(b); 940 CMR 29.05(7). After 30 days have passed since you filed your complaint with the Committee, you may file a request with our office for further review of your complaint.

Thirty days have now passed since you first filed your complaints with the Committee. You may file a complaint with our office for further review up until 90 days have passed since the alleged violation date. If you wish to request further review of your complaint, we must receive your request for further review and a copy of the initial complaint by **July 10, 2023**. If we do not receive a request from you for further review by that date, we will presume that the action taken by the Committee was sufficient and will close the file.

Please feel free to contact us if you have any questions about the Open Meeting Law complaint process.

Sincerely,

**Natalie Arellano (she/her/hers)**

Paralegal

Division of Open Government

Massachusetts Office of the Attorney General